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June 3, 2005

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Federal Communications Commission  
Office of Secretary

**BY HAND DELIVERY**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
236 Massachusetts Avenue, N.E., Suite 110  
Washington, DC 20002

Re: Notice of Oral *Ex Parte* Presentations – Request for  
Expedited Declaratory Ruling (MB Docket No. 04-75)

Dear Ms. Dortch:

On May 27, 2005, the undersigned counsel to Max Media of Montana LLC (“Max Media”), and Erwin G. Krasnow, Esq., Garvey Schubert Barer, counsel to Destiny Licenses, LLC (“Destiny”), met with Mr. Matt Brill, Senior Legal Advisor to Commissioner Kathleen Abernathy, regarding the Request for Expedited Declaratory Ruling filed on February 25, 2004 (Public Notice DA 04-747, March 19, 2004). The representatives of Max Media and Destiny reiterated the positions set forth in their pleadings in this proceeding and countered the argument that if low-power television station (“LPTV”) KBGF-LP, Great Falls, Montana, carries NBC programming, the issue of a network territorial exclusivity rule violation would be moot. Beartooth Communications Company, the licensee of KTVH, Helena, Montana, recently acquired this low power station.

Max Media and Destiny distinguished the case where the network organization is switching affiliations among stations licensed to the same community, *i.e.*, the *Scripps Howard* precedent (*see* Letter to Eugene F. Mullin and Nathaniel F. Emmons, 10 FCC Rcd 4416, 78 RR 2d 88 (1995), from this case where a station has tried to cure its violation of the network territorial exclusivity rule with an eleventh-hour acquisition of a low power television station in the protected community, *i.e.*, Great Falls, Montana. In 1999, Sunbelt bargained for and acquired expanded territorial exclusivity in violation of Section 73.658(b), and apparently now Beartooth, Sunbelt’s subsidiary, plans to utilize the recently-acquired KBGF-LP to distribute the NBC programming to a limited portion of the Great Falls community after KTGF’s NBC affiliation agreement is terminated. Under these circumstances, KBGF-LP should not be considered a “broadcast station” in the Great Falls community sufficient to bring this case within the scope of the *Scripps Howard* precedent.

Substantial harm to the public interest would result from equating KBGF-LP with KTGF for the purposes of Section 73.658(b). NBC network programming now available to viewers in Great Falls would be substantially diminished because of the extremely limited coverage of LPTV station

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KBGF-LP. Attached hereto is a coverage map prepared by a qualified consulting engineering firm, du Triel, Lundin & Rackley, depicting the vastly reduced coverage that KBGF-LP would provide to Great Falls. KTGF presently provides NBC network programming to 16,338 more viewers than KBGF-LP's 74 dBu contour would reach. Furthermore, KBGF-LP is far less able to serve viewers in the rural areas of Great Falls. KBGF-LP covers less than 7% (466 sq. miles) of KTGF's present vast coverage area (6,784 sq. miles).

The LPTV service was created in 1982 as a *secondary* service. See Establishment of a Class A Television Service, Report and Order, 15 FCC Rcd 6355, para 2. (2000). Subsequently, the Commission has repeatedly declined to treat LPTV and full-power stations as equivalent in terms of interference protection, public interest obligations, and community service. The sacrifice of LPTV service in the Commission's DTV allotment/assignment process clearly illustrates this point. Moreover, a 1996 allotment proceeding, where an objecting party argued that Lewiston, Montana could be just as well served by an existing LPTV station in lieu of a full-power station using the proposed allotment, further illustrates this point:

**We have not in the past considered the availability of LPTV stations as a substitute for full-power stations in allotment proceedings, and [the proponent of that change] has not demonstrated why we should do so now. All broadcast television stations must serve the needs and interests of their communities of license. LPTV stations do not have the same public service obligations. Also, LPTV service is secondary to full-power television service, subject to destructive interference. As a result, LPTV service to the residents of Lewistown could have been less reliable, and we decline to equate it with service from a full-power station assured of interference protection. Amendment of Section 73.606(b) Table of Allotments, TV Broadcast Stations (Billings and Lewistown, Montana), *Memorandum Opinion and Order*, 11 FCC Rcd 8560 (1996).**

The territorial exclusivity rule is grounded in the public interest. The rule is intended to ensure a given community is not deprived of network service as a result of anti-competitive arrangements between a station licensed to another community and a network organization. In adopting the rule changes that resulted in the present territorial exclusivity rule, the Commission stated:

Section 3.568(b) of the Commission Rules presently permits a television station which renders coverage to a substantial portion of the service area of a station located in another community to contract with a network to prevent the station in the other



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community from carrying particular network programs; even though the sponsor of the program or network may desire that the latter station also broadcast the programs. ***The proposed amendment would revise the [territorial exclusivity rule] so as to preclude a station in one community from depriving stations in other communities of the opportunity of securing and carrying the same network programs.*** Report and Order, 12 R.R. 1537, para 3. (1955). [Emphasis added.]

In sum, the Commission should reject Sunbelt's eleventh hour attempt to cure its violation of the territorial exclusivity rule. Sunbelt's attempt to rewrite the network territorial exclusivity rule is contrary to the public interest and is plainly inconsistent with precedent and the Commission's existing rules and policies. Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to Mr. Matt Brill. In addition, a copy of this letter, with attachment, has been served on all parties of record to this proceeding.

Respectfully submitted,

  
Julian L. Shepard

cc: Mr. Matt Brill



**KTGF(TV) (LIC)**  
**CH 16 2040 KW (DA)**  
 80 dBu  
 74 dBu  
 64 dBu

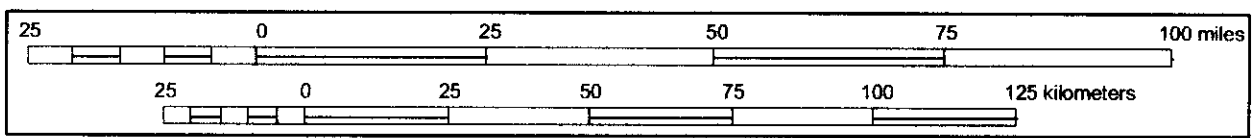
**KBGF-LP (CP-MOD)**  
**CH 50 50 KW (DA)**  
 74 dBu

**KTGF TERRAIN LIMITED  
 COVERAGE (Longley-Rice)**  
 [Cross-hatch symbol] **GREATER THAN  
 64 dBu**

KTGF

	<u>Coverage Comparison</u>				
	<u>KTGF(TV)</u>				<u>KBGF-LP*</u>
	<u>City Grade</u>	<u>Grade A</u>	<u>Grade B</u>	<u>Longley-Rice</u>	
	<u>80 dBu</u>	<u>74 dBu</u>	<u>64 dBu</u>	<u>64 dBu</u>	<u>74 dBu</u>
Population (2000 Census)	80,704	83,161	87,351	88,634	72,296
Area (sq mi)	2,488	3,562	6,008	6,784	466

\*74 dBu is the FCC protected contour for a UHF LPTV station.



**PREDICTED COVERAGE**  
 KTGF(TV) CH16 2040 KW (DA)  
 KBGF-LP CH50 50 KW (DA)  
 GREAT FALLS, MONTANA  
 du Treil, Lundin & Rackley, Inc Sarasota, Florida

## CERTIFICATE OF SERVICE

I, Angela C. Spencer, do hereby certify that on this 3<sup>rd</sup> day of June, 2005, a copy of the foregoing "Notice of Ex Parte Oral Presentations – Request for Expedited Declaratory Ruling (MB Docket No. 04-75)" was served by first class United States mail, postage prepaid, addressed to:

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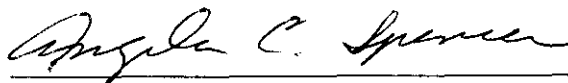
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